

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

vs.

McGINN, SMITH & CO., INC.,  
McGINN, SMITH ADVISORS, LLC,  
McGINN, SMITH CAPITAL HOLDINGS CORP.,  
FIRST ADVISORY INCOME NOTES, LLC,  
FIRST EXCELSIOR INCOME NOTES, LLC  
FIRST INDEPENDENT INCOME NOTES, LLC,  
THIRD ALBANY INCOME NOTES, LLC,  
TIMOTHY M. McGINN, AND DAVID L. SMITH,  
LYNN A. SMITH, GEOFFREY R. SMITH, Trustee  
of the David L. and Lynn A. Smith Irrevocable Trust  
U/A 8/04/04, GEOFFREY R. SMITH, LAUREN  
T. SMITH, and NANCY McGINN,

**Case No.: 1:10-CV-457  
(GLS/DRH)**

*Defendants,*

LYNN A. SMITH and NANCY McGINN,

*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

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**NOTICE OF MOTION SEEKING TO MODIFY THE ASSET  
FREEZE TO PROVIDE LIVING EXPENSES, RELEASE CERTAIN  
ACCOUNTS IN THE NAMES OF GEOFFREY AND LAUREN  
SMITH, AND TO PROVIDE COUNSEL FEES**

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PLEASE TAKE NOTICE, that upon all the pleadings and proceedings heretofore  
had herein, Defendant/Relief Defendant, Lynn A. Smith, Defendant/Intervenor, Geoffrey  
R. Smith, individually and as Trustee of the David L. and Lynn A. Smith Irrevocable

Trust U/A 8/04/04, and Defendant, Lauren T. Smith (collectively the “Movants”), respectfully moves this Court to grant limited relief from the July 7, 2010 Order by releasing assets to pay living expenses, releasing assets not associated with any fraudulent activity, and releasing assets to provide counsel fees.

Defendant/Relief Defendant, Lynn A. Smith respectfully requests that the Court release \$4,144 per month from her individual assets to meet living expenses necessary for her day to day survival. Lynn Smith’s personal assets have been frozen by the government for over three years. This is equal to well over 1,200 days. Lynn Smith’s extreme financial hardship has led directly to this motion. Additionally, Geoffrey and Lauren Smith have been adversely affected by the asset freeze. Lauren Smith respectfully requests that the Court release certain personal accounts from the asset freeze that have not been traced to any ill-gotten gains or fraudulent transfers.

Finally, due to the on-going demands of defending this action, Movants respectfully request that the Court approve the release of \$100,000 to allow for the payment of legal expenses as set forth in the Declaration of Counsel. In support of their motion, Movants have prepared the accompanying Memorandum of Law, Affidavit of Lynn A. Smith, and Declaration of Counsel.

Dated: October 18, 2013

Respectfully submitted,

**Featherstonhaugh, Wiley & Clyne, LLP**

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Intervenor, Geoffrey R. Smith, Trustee  
of the David L. and Lynn A. Irrevocable  
Trust U/A 8/04/04 & Defendant,  
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